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SUPREME COURT, U.S.

No. 76-6528

IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1976

DAVID WAYNE BURKS, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR
THE SIXTH CIRCUIT

Petri REPLY BRIEF TO BRIEF IN OPPOSITION

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MAY IT PLEASE THE COURT:

This Reply Brief is filed pursuant to Rule 24(4) of the Rules of this Honorable Court and is addressed only to arguments first raised in the Brief in Opposition.

ARGUMENT

1. The Petition for Writ of Certiorari was timely filed.

The appellate record clearly establishes the timeliness of this petition, and the Solicitor General asked for, and was in receipt of that record.

The record shows that following the denial of a Petition for Rehearing by the Sixth Circuit on February 8, 1977, the petitioner motioned the appellate court on two occasions for a stay of mandate pending his Petition for Writ of Certiorari. The first thirty day stay of mandate was ordered by the Sixth Circuit on February 18, 1977. A second thirty day stay of mandate was ordered March 9, 1977 until April 19, 1977.

This petition was thus timely filed in this Honorable Court.

2. Abney v. United States is inapposite.

The respondent offers this Court's decision in Abney v. United States, No. 75-6521, argued January 17, 1977, as a reason to deny the petition. This case is not at the pretrial stage but is already on review, and, as such, it is "ripe for review." Indeed, there are, as presented in petitioner's questions in his Petition for Writ of Certiorari, important legal and constitutional issues which respondent failed to even consider in their magnitude, which should be considered by this Honorable Court upon acceptance of the Petition for Writ of Certiorari.

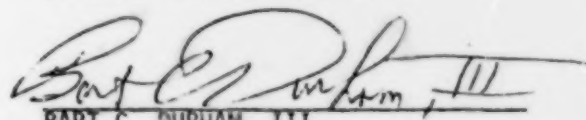
3. United States v. Wiley supports petitioner's contentions.

Respondent states in his Memorandum in Opposition that petitioner's reliance on United States v. Wiley, 517 F.2d 1212 (C.A.D.C.) is misplaced. Petitioner used United States v. Wiley, supra, for one reason, that being that Judge Leventhal wrote the opinion in Wiley, and he recognizes and expresses in some length exactly what petitioner believes to be one important reason why this Honorable Court should grant the Petition for Writ of Certiorari. Petitioner, in relying on Wiley, is actually relying on Judge Leventhal's expostulations concerning the current state of appellate confusion among the circuit courts that would justify this Honorable Court's granting the Petition for Writ of Certiorari.

CONCLUSION

The Petition for Writ of Certiorari should be granted and the case set for hearing.

Respectfully submitted,



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